IN THE HIGH COURT OF BOMBAY AT GOA
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CIVIL REVISION APPLICATION NO. 263 OF 2000

Smt. Yashodabai Ganesh
Naik Gaunekar
(deceased), through her
legal representative Shri
Narendranath Ganesh Naik
Gaunekar, major, r/o
gaunem, Bandora,
Ponda, Goa. .... Petitioner

Versus

Shri Gopi Mukund Naik,
major, r/o Gaunem,
Bandora, Ponda, Goa. .... Respondent.

Shri P. A. Kholkar, advocate for the petitioner.

None for the respondent.

CORAM: V. C. DAGA, J.

DATE: 4th July, 2002.

ORAL JUDGMENT

This case affords a further illustration, if further illustrations are required, of the confusion of our law and how the decree-holder had to suffer at the hands of the Court. The Executing Court disposed of execution proceedings in a very casual and cursory manner, taking a thoroughly untenable and unjust view not palatable to any judicial mind.

BRIEF FACTS

2. The brief narration of facts will be useful for correct appreciation of the issues involved in this case.

3. The source of this revision petition is the Order dated 28th June, 2000, passed by the Civil Judge, Senior Division, Ponda, in Execution Application No.7/99/A, arising out of execution of decree passed in Regular Civil Suit No.36/92, whereunder a decree for permanent injunction restraining the defendant, his relations, his servants and agents from interfering with the suit property bearing survey no.206/4, known as "DAIMODEM", situated at Bandora was passed.

4. It appears that the decree-holder, upon initiation of the execution proceedings against the judgment-debtor preferred an application under Order 21 Rule 4 of the Code of Civil Procedure Code (the "C.P.C." for short), for attachment and sale of the property of the judgment-debtor. It further appears that the decree-holder also brought to the notice of the Executing Court that inspite of the decree of permanent injunction, the judgment-debtor trespassed into the suit property, which ultimately resulted in detention of the judgment-debtor in civil prison. He suffered civil imprisonment for 15 days. The said judgment-debtor again after release from civil prison, committed breach of the decree of permanent injunction with the help of his two sons, which appears to have compelled the decree-holder to seek further action against the judgment-debtor and his two sons, including action for detention of the

judgment-debtor and his sons in civil prison. The Executing Court, after hearing the parties to the execution proceedings, dismissed the execution petition holding that the judgment-debtor cannot be detained in civil prison on second occasion as the relief is barred by constructive res judicata. The aforesaid Order of the Executing Court, is the subject-matter of challenge in this revision.

ISSUES TO BE DECIDED

5. On the backdrop of the above facts and on the canvass of the order passed by the Executing Court, the following issues need consideration:-

(i) Whether the detention of the judgment-debtor in civil prison for having committed breach of the decree of permanent injunction tantamounts to satisfaction of the decree obtained by the decree-holder? and

(ii) Whether the Executing Court is helpless to implement decree even if judgment-debtor keeps on committing repeated and successive breaches thereof?"

FINDINGS

6. Having heard parties, in order to answer the questions involved in this revision petition, one has

to turn to the relevant part of the provisions of Order 21 Rule 32 read with Section 51 of the C.P.C. which reads as under:-

> **"32. Decree for specific performance for restitution of conjugal rights, or for an injunction -**
>
> (1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property and, or in the case of a decree for the specific performance of a contract, or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both."

7. A perusal of the aforesaid provision of the C.P.C. would demonstrate that the decree of injunction can only be executed in the manner prescribed under Order 21 Rule 32. Order 21 Rule 32 read with Section 51 of the C.P.C. is meant to enable the party to enforce the decree of the permanent injunction. Simultaneously, execution of both; the property and the person of the judgment-debtor, is allowed, but the Court has discretion to reject simultaneous execution. Under Order 21 Rule 32 (1) C.P.C. decree for injunction can be executed by detaining the judgment-debtor in the civil prison, or attachment of his property, or both.

8. The issue of warrant of arrest without satisfying the other modes of execution may not be a proper exercise of discretion on the part of the Executing Court. The execution by arrest or detention can be resorted to only if the breach is found to be wilful and intentional. "Wilful failure" means want of bona fide. "Wilful disobedience" of injunction decree by a party bound by it, makes it necessary for the Executing Court to exercise jurisdiction vested under the rule in accordance with law. The jurisdiction conferred under Order 21 Rule 32(1) C.P.C. can be exercised only when the party against whom injunction has been passed, wilfully fails to obey it. No Court should resort to such drastic method to enforce decree unless there is a wilful failure to obey the decree. Before a decree for injunction made be enforced by attachment or imprisonment, it must be established that the judgment-debtor had an opportunity of obeying the injunction contained in the decree and has deliberately failed to obey it. Then the decree may be enforced by attachment of his property or by detaining the judgment-debtor in civil prison, but no order enforcing the decree by imprisonment should be made until the judgment-debtor had an opportunity of obeying the decree of permanent injunction. The scheme of the provision embodied under Order 21 Rule 32 read with Section 51 C.P.C. constitutes a complete mode of execution of decree of injunction, the details of which are already discussed

hereinabove. Having examined the scheme of the Code in the matter of execution of decree, one thing is clear, that the law prescribes various modes of execution. The decree-holder has an option to seek any particular remedy prescribed by Section 51 C.P.C..

9. With the aforesaid backdrop, turning to the facts of the present case on hand, it is clear that when the judgment-debtor has suffered civil imprisonment, it must have been on the satisfaction of the Court that the default on the part of the judgment-debtor was wilful, deliberate and intentional. A decree for permanent injunction has the effect of restraining the judgment-debtor permanently from obstructing the enjoyment of the property covered in the decree. Such a decree can only be satisfied by obeying it. In the event of its disobedience, it can always be put into execution. The decree has a permanent and perpetual life. It can be put into execution at any time to prevent breach or to prevent apprehended breach, subject to the law of limitation for the time being in force.

10. A distinction has to be drawn between the mode of enforcing decree on one hand and actual satisfaction thereof, sentencing a person to jail is a "mode of enforcement". It is not a mode of satisfaction of the decree. The whole purpose of detaining a person in

civil prison is to compel a person liable to obey the mandate of a decree who refused to comply with the terms of the decree without satisfactory cause. The purpose of sentencing him to jail is not to wipe out his liability to comply with the decree. A sentence of jail or detention of a person in civil prison, is no substitute for compliance of the decree. It is not a mode of discharging or satisfying a decree. The compliance of the decree can only be sought by resorting to these penal actions. The liability or obligation flowing from the decree cannot be taken to have been discharged by detaining a person liable to comply with the decree, to jail. At the cost of repetition, it may be stated that it is only a mode or method of implementation of a decree and/or mandate flowing therefrom. No other view is possible. That is the reason why I am inclined to set aside the impugned Order.

11. At this juncture, it will be useful to refer to the Division Bench Judgment of this Court delivered at Nagpur Bench in the case of **Shionarayan Jaiswal vs. Ramdhani Choudhari & Anr.,** in Contempt Petition No.72 of 1988 on 30th November, 1988, (unreported) wherein the judgment-debtor having committed breach of the undertaking given to the Court, to vacate the suit premises underwent punishment by way of simple imprisonment for two months and paid fine of Rs.500/-.

After his release, when called upon to deliver vacant possession, he again on second occasion refused to vacate the suit block. Consequently, he was required to prefer another contempt petition for taking suitable action against the judgment-debtor for disobedience of the undertaking given by him to the Court. Inspite of explaining the consequences, the respondent no.1 in that case had decided to contest the contempt proceedings. The Division Bench after hearing the parties to the proceedings on merits, found that appropriate directions to close the breach of the undertaking given to the Court could be issued, but finding that no useful purpose would be served by tendering or putting the contemner in prison on second occasion, the Division Bench thought it better to issue directions for restoration of the possession of the suit property to the decree-holder by coercive process of law, with police assistance and imposed punishment of fine of Rs.500/- for committing contempt of Court on second occasion. It is thus clear that it is not that once a person is made to suffer imprisonment or detention in civil prison, he cannot be proceeded with on second occasion for the fresh breach committed by him. Each breach is independent and is actionable in law. Merely by putting a person in civil prison the decree does not get wiped out or satisfied. The Executing Court was therefore absolutely wrong in applying the doctrine of constructive res judicata and holding that the judgment-debtor cannot

be imprisoned on second occasion. The impugned Order of the Executing Court is unsustainable in law. The same deserves to be set aside.

12. With regard to the execution and/or implementation of the decree of permanent injunction is concerned, it appears that the civil imprisonment had no effect on the judgment-debtor. He was detained in civil prison for fifteen days. He suffered the said detention, but did not amend his attitude and ventured to commit successive breaches of the decree of injunction. The effective order against him could be by attachment of his property and in the event of persistent breach and the sale thereof. If no property is available for attachment, and if the judgment-debtor persists in committing deliberate and wilful breach of the permanent injunction, he may again be detained in civil prison, depending upon the gravity of the breach committed by him. Nobody can be allowed to take law in his own hands. Rule of law must prevail. The Executing Court is not helpless to take action against the sons in properly constituted proceedings if the Executing Court finds that the sons of the judgment-debtor are abetting the breach of the decree for permanent injunction. If courts fail to get their orders implemented, the people will loose faith in the Judiciary. The Executing Court is directed to deal with the situation with stern hands and prevent breach of the

decree of permanent injunction.

13. The revision petition stands disposed of in terms of this Order with no order as to costs.

V. C. DAGA, J.

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